

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN CLERK'S OFFICE
U.S.D.C.-Atlanta

AUG 17 2005

LUTHER D. THOMAS, Clerk
By: *[Signature]*
Deputy Clerk

INTEGRITY TOYS, INC.,)
a New Jersey corporation,)
)
Plaintiff.)
)
v)
)
ABC International Traders,)
Inc., d/b/a MGA Entertainment)
Corporation,)
a California corporation,)
)
Defendant)
_____)

Civil Action No **05 CV 2142**

TRIAL BY JURY DEMANDED TWT

COMPLAINT

Plaintiff Integrity Toys, Inc., for its Complaint against Defendant ABC International Traders, Inc d/b/a MGA Entertainment Corporation, states as follows

INTRODUCTION

1

This is an action for federal and common law unfair competition for unauthorized use of Plaintiff's "JADE" trademark in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) and the Uniform Deceptive Trade Practices

FORMS RECEIVED

Consent To US Mag ☒

Pretrial Instructions ☐

Title VII NTG ☐

[Signature]

Act, O.C.G.A. § 10-1-370 et seq.; for violation of the Georgia Passing Off Statute, O.C.G.A. § 23-2-55, and for Georgia trademark dilution, O.C.G.A. § 10-1-451(b). Plaintiff seeks equitable relief, including injunctive relief to prevent further unauthorized and deceptive usage of Plaintiff's "JADE" trademark, as well as damages, punitive damages, costs and attorney's fees

PARTIES, JURISDICTION AND VENUE

2.

Plaintiff Integrity Toys, Inc. ("Integrity Toys") is a New Jersey corporation with its principal place of business in Chesapeake City, Maryland.

3.

Upon information and belief, Defendant ABC International Traders, Inc. is a California corporation, doing business as MGA Entertainment Corporation ("MGA Entertainment") with its principal place of business in North Hills, California. MGA Entertainment can be served with process through its registered agent, Isaac E. Larian, located at 16730 Schoenborn Street, North Hills, California 91343.

4

This Court has personal jurisdiction over the Defendant MGA Entertainment in that it is doing business in the State of Georgia and has committed acts within this State giving rise to this Complaint.

5

This Court has subject matter jurisdiction pursuant to 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331 and 1338(a) & (b), and has supplemental jurisdiction over the state common law claims under 28 U.S.C. § 1367(a)

6

Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(b) & (c).

FACTS COMMON TO ALL COUNTS

PLAINTIFF AND ITS WELL-KNOWN “JADE” TRADEMARK

7.

Since at least as early as 1997, Integrity Toys has been using the mark “JADE” (the “Mark”) in connection with a series of dolls, which are offered for sale across the nation and available for purchase in national retail chains such as Wal-Mart, K-Mart, Toys ‘R’ Us, Kaybee Toys, CVS, Ames, Kroger’s and Walgreen’s stores.

8.

For example, Integrity Toys offers a JADE “Cool Streaks” doll, a JADE “Tropical Splash” doll, a JADE “Future World” doll, a JADE “Capri Casual” doll, and a JADE “In Style” doll, among others. Copies of various pages from Integrity Toys’ catalogs evidencing and illustrating Integrity Toys’ use of the Mark are attached to the Complaint as Exhibit “A ”

9.

Integrity Toys is the largest manufacturer of ethnic dolls in the United States and since its first use of the Mark. Integrity Toys has sold approximately hundreds of thousands of dollars in JADE brand dolls.

10.

Since its first use of the Mark, Integrity Toys has spent thousands of dollars in advertising and promotion of its dolls under the Mark. Beginning in 1997 and continuing through 1998, 1999, 2000, 2001, 2002, 2003, and 2004, Integrity Toys circulated thousands of advertising brochures listing its JADE dolls to distributors and consumers nationwide and has thousands of dollars worth of JADE dolls. In addition, Integrity Toys advertises and promotes its line of JADE dolls through its website at www.integritytoys.com

11

Integrity Toys has invested significant resources, time, and money in the developing its dolls under the Mark. As a result, Integrity Toys has developed substantial goodwill in the Mark, which serves to distinguish Integrity Toy's dolls from those of others and to indicate the source, origin, sponsorship and affiliation of Integrity Toys goods.

12

Integrity Toys owns United States Trademark Application Serial No 78/369,884 for the Mark in respect of dolls, which it filed with the United States Patent and Trademark Office ("PTO") on February 18, 2004. A copy of the particulars for the Application is attached to the Complaint as Exhibit "B "

DEFENDANT'S INFRINGING ACTIVITIES

13.

Upon information and belief, MGA Entertainment distributes and sells toys, including dolls. In addition, MGA Entertainment's dolls are available in some of the same national retail chains in which Integrity Toys dolls are sold, including, Wal-Mart and Toy 'R' Us.

14.

MGA Entertainment is the owner of U.S. Trademark Registration No. 2,602,536 for the mark “JADE” in respect of dolls, which issued on July 30, 2002 (the “Registration”). A copy of the particulars for the Registration is attached as Exhibit “C.”

15.

In the Registration, MGA Entertainment claims first use of “JADE” in connection with dolls as of May 21, 2001. Such use is junior to Integrity Toys’ use of its JADE mark in 1997.

16.

On or around October 21, 2003, Integrity Toys received a letter from counsel for MGA Entertainment in which MGA Entertainment asserted claims of trademark infringement, unfair competition, and dilution based on Integrity Toys’ use of the Mark for dolls and demanding that Integrity Toys cease use of the Mark (the “Cease & Desist Letter”). A true and correct copy of said Cease and Desist Letter is attached to the Complaint as Exhibit “D.” MGA Entertainment has thus agreed and asserted that a likelihood of confusion exists between MGA’s JADE mark for dolls and Integrity Toys’ JADE mark for dolls.

17.

On or around November 10, 2003, counsel for Integrity Toys responded to MGA Entertainment's Cease & Desist Letter informing MGA Entertainment of Integrity Toys' prior and superior rights to the Mark in respect of dolls and demanding that MGA Entertainment immediately cease its infringing use of the Mark. A true and correct copy of that letter is attached to the Complaint as Exhibit "E."

18

On January 1, 2004, Integrity Toys filed a Petition for Cancellation of MGA Entertainment's Registration for "JADE" with the USPTO's Trademark Trial and Appeal Board, which Petition is still pending.

19.

MGA Entertainment has refused to accede to Integrity Toys demands and has continued its infringing use of the Mark on several competing dolls. True and correct copies of pictures of some of MGA Entertainment's dolls identified by "JADE" which are currently available for purchase at Toys 'R' Us stores in Atlanta, Georgia are attached to the Complaint as Exhibit "F."

20.

In addition, MGA Entertainment has continued to promote and advertise its dolls using the Mark through several media, including MGA Entertainment's website at: www.mgae.com

THE EXTENSIVE INJURY CAUSED TO INTEGRITY TOYS

21.

The damaging effect of Defendant's infringement is extensive. Integrity Toy's business interests are directly harmed, because its intellectual property is being infringed. Furthermore, Defendant is cheating Integrity Toys – the legitimate trademark holder – out of substantial sales and goodwill.

22

MGA Entertainment's continued use and promotion of dolls identified by a mark that is identical to Integrity Toys' JADE Mark on directly competitive dolls, all of which MGA Entertainment has asserted results in a likelihood of confusion, unless enjoined, is likely to cause consumer confusion or mistake, or to deceive, as to the source, origin, sponsorship or approval of the respective dolls produced or distributed by MGA Entertainment and Integrity Toys. In particular, Defendant's actions are likely to cause confusion and mistake among consumers that: (a) Defendant's "JADE" toys originate with Integrity Toys, (b) Integrity Toys is

affiliated, connected or associated with the Defendant; and (c) that Defendant's infringing "JADE" toys are being offered to consumers with the sponsorship and approval of Integrity Toys.

23.

In addition, MGA Entertainment's continued use of "JADE" to identify dolls has caused injury, loss and damage to Integrity Toys and threatens to cause Integrity Toys further immediate and irreparable injury, loss and damage for which it will have no adequate remedy at law. Further, Integrity Toys' loss of control over the "JADE" Mark and to its reputation and goodwill constitutes an irreparable injury.

24.

MGA Entertainment's continued use of "JADE" to identify dolls, without authorization and over the protest of Integrity Toys evidences willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to the consequences of such conduct.

COUNT ONE

FEDERAL UNFAIR COMPETITION

25.

Integrity Toys incorporates herein and realleges, as if fully set forth in this paragraph, the allegations in Paragraphs 1-23 above, inclusive.

26.

The aforesaid actions of Defendant MGA Entertainment in adopting and using the mark “JADE” to identify dolls is likely to cause confusion or to cause mistake, or to deceive as to the source, origin, sponsorship or approval of the dolls produced or distributed by Integrity Toys and MGA Entertainment, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)

27.

MGA Entertainment’s continuing use of “JADE” to identify dolls falsely suggests an affiliation or connection with or sponsorship or approval of MGA Entertainment and its dolls by Integrity Toys, and/or of Integrity Toys and its dolls by MGA Entertainment, in violation of 15 U.S.C. § 1125(a).

28.

The actions complained of herein have caused damage to Integrity Toys and to its business, reputation and goodwill.

29.

Unless preliminarily and permanently enjoined, MGA Entertainment's conduct will cause Integrity Toys irreparable harm for which there exists no adequate remedy at law.

30.

Integrity Toys is entitled to recover from MGA Entertainment all damages it has sustained due to MGA Entertainment's improper conduct, and MGA Entertainment's profits obtained from their infringing conduct, in an amount to be proved at trial and to be trebled, pursuant to 15 U.S.C. § 1117

31

Upon information and belief, the actions of MGA Entertainment have been willful and deliberate and amount to exceptional circumstances, justifying an award of attorneys' fees to Integrity Toys pursuant to 15 U.S.C. § 1117

COUNT TWO

COMMON LAW TRADEMARK MARK INFRINGEMENT

32.

Integrity Toys incorporates herein and realleges, as if fully set forth in this paragraph, the allegations in paragraphs 1-30 above, inclusive.

33.

Integrity Toys has prior and exclusive rights to use the JADE Mark to identify, market, promote and sell its dolls

34.

MGA Entertainment's use of an identical mark for its dolls has caused a likelihood of confusion, mistake or deception, and therefore infringes Integrity Toys rights in and to its JADE Mark in violation of the common law of Georgia.

35.

MGA Entertainment's actions complained of herein have caused damage to Integrity Toys and to its business, reputation and goodwill.

36

Integrity Toys is entitled to recover its damages sustained due to MGA Entertainment's improper conduct, in an amount to be proved at trial

37

Unless preliminarily and permanently enjoined, MGA Entertainment's conduct will cause Integrity Toys irreparable harm for which there exists no adequate remedy at law

38

Upon information and belief, the actions of MGA Entertainment have been willful and deliberate and amount to exceptional circumstances, justifying an award of attorneys' fees to Integrity Toys

COUNT THREE

VIOLATION OF THE GEORGIA DECEPTIVE TRADE PRACTICES ACT

39

Integrity Toys incorporates herein and realleges, as if fully set forth in this paragraph, the allegations in paragraphs 1-37 above, inclusive

40.

By reason of the foregoing, MGA Entertainment has engaged in acts which have caused a likelihood of confusion or misunderstanding as to the source, sponsorship, or approval or certification of goods.

41

By reason of the foregoing, MGA Entertainment has engaged in acts which have caused a likelihood of confusion or misunderstanding as to the affiliation, connection or association with or certification by another.

42.

MGA Entertainment's conduct constitutes unfair and deceptive trade practices in violation of Georgia law, including the Georgia Uniform Deceptive Trade Practices Act, O.C.G.A. § 10-1-370, et seq.

43.

MGA Entertainment's actions complained of herein have caused damage to Integrity Toys and to its business, reputation and goodwill

44

Unless preliminarily and permanently enjoined, MGA Entertainment's conduct will cause Integrity Toys irreparable harm for which there exists no adequate remedy at law

45.

Integrity Toys is entitled to recover its attorneys fees and costs incurred in connection with this action

46.

Upon information and belief, the actions of MGA Entertainment have been willful and deliberate and amount to exceptional circumstances, justifying an award of attorneys' fees to Integrity Toys

COUNT FOUR

COMMON LAW UNFAIR COMPETITION

47

Integrity Toys incorporates herein and realleges, as if fully set forth in this paragraph, the allegations in paragraphs 1-45 above, inclusive.

48.

The aforesaid actions of MGA Entertainment in adopting and using an identical mark to Integrity Toy's JADE mark to identify directly competitive toys, namely, dolls, constitutes unfair competition in violation of the common law of the State of Georgia.

49.

MGA Entertainment's actions complained of herein have caused damage to Integrity Toys and to its business, reputation and goodwill.

50.

Integrity Toys is entitled to recover from MGA Entertainment all damages sustained due to MGA Entertainment's improper conduct, in an amount to be proved at trial.

51.

Unless preliminarily and permanently enjoined, MGA Entertainment's conduct will cause Integrity Toys irreparable harm for which there exists no adequate remedy at law

52.

Upon information and belief, the actions of MGA Entertainment have been willful and deliberate and amount to exceptional circumstances, justifying an award of attorneys' fees to Integrity Toys

COUNT FIVE

VIOLATION OF GEORGIA PASSING OFF STATUTE

53.

Integrity Toys incorporates herein and realleges, as if fully set forth in this paragraph, the allegations in paragraphs 1-51 above, inclusive

54.

By reason of the foregoing, MGA Entertainment has willfully engaged in acts which have caused a likelihood of confusion or misunderstanding as to the source, sponsorship, approval or certification of its dolls bearing Integrity Toys' JADE Mark.

55

By reason of the foregoing, MGA Entertainment has willfully engaged in acts which have caused a likelihood of confusion or misunderstanding as to the affiliation, connection or association with or certification by another in violation of O.C.G.A. § 23-2-55.

56

MGA Entertainment's actions have caused damage to Integrity Toys and to its business, reputation and goodwill

57

Unless preliminarily and permanently enjoined, MGA Entertainment's conduct will cause Integrity Toys irreparable harm for which there exists no adequate remedy at law.

COUNT SIX

GEORGIA TRADEMARK DILUTION

58.

Integrity Toys incorporates herein and realleges, as if fully set forth in this paragraph, the allegations in paragraphs 1-56 above, inclusive

59.

MGA Entertainment's conduct mentioned herein has caused injury to the business reputation of Integrity Toys and/or of a dilution of the distinctive quality of Integrity Toys' JADE Mark, thereby diluting the distinctiveness and value of the Mark in violation of O.C.G.A. § 10-1-451(b) and Georgia common law

60.

MGA Entertainment's actions complained of herein have caused damage to Integrity Toys and to its business, reputation and goodwill.

61.

Integrity Toys is entitled to recover its damages sustained due to MGA Entertainment's improper conduct, in an amount to be proved at trial

62.

Unless preliminarily and permanently enjoined, MGA Entertainment's conduct will cause Integrity Toys irreparable harm for which there exists no adequate remedy at law.

WHEREFORE, by virtue of the infringing and unlawful conduct of MGA Entertainment as alleged in this Complaint, Integrity Toys respectfully prays that the Court

1 Award judgment to Integrity Toys and against MGA Entertainment,
on all counts of the Complaint,

2. Award Integrity Toys compensatory damages sustained due to MGA
Entertainment's unlawful and infringing conduct, and all profits derived by MGA
Entertainment from its unlawful and infringing conduct, in an amount to be proved
at trial and to be trebled;

3 Award Integrity Toys preliminary and permanent injunctive relief
against MGA Entertainment its officers, directors, employees, agents, servants,
representatives, partners, subsidiaries, attorneys and any persons under its control
or acting in concert or privity with it, or persons purporting to act on its behalf
from using, reproducing, or misappropriating Integrity Toys' JADE Mark;

4 Enter an order that Defendant be enjoined to deliver upon oath, to be
impounded during the pendency of this action and destroyed pursuant to judgment
herewith, all marks, products, and merchandise in its possession, custody or
control which are shown by the evidence to unlawfully bear and infringe Integrity
Toys' JADE Mark, and any reproductions, copies or colorable imitations thereof;

5 Award Integrity Toys recovery of its reasonable attorneys' fees and
costs of prosecuting this action;

6. Award Integrity Toys punitive damages in an amount deemed appropriate;
7. Grant such other, further, and different relief as the Court deems just and equitable; and
8. Order a trial by jury on all appropriate issues.

Respectfully submitted this 17th day of August, 2005.

TROUTMAN SANDERS LLP



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ATTORNEYS FOR PLAINTIFF

INTEGRITY TOYS, INC.

FONT CERTIFICATION

I hereby certify that this document is presented in Times New Roman 14



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